HON'BLE DR. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.1090 of 2005

JUDGMENT:

This appeal is filed by the appellant/respondent No.3 aggrieved by the award of compensation of Rs.1,50,000/- to the claim petitioners in O.P.No.613 of 2000 on the file of the Motor Accidents Claims Tribunal-cum-Principal District Judge, Ranga Reddy District, by award and decree dated 17.07.2004.

2. Learned counsel for the appellant-insurance company contended that Smt.K.Laxmamma (hereinafter referred as "the deceased") was a gratuitous passenger in the lorry bearing No.AHT 7350. She was not travelling with any goods. There is no evidence to believe that the deceased engaged the lorry and travelling with goods in the said lorry. Even then, the Tribunal held that the appellant/insurer and owner of the vehicle are jointly and severally liable to pay compensation. In support thereof, learned counsel for the appellant relied on the decision in **New India Assurance Company Limited v. Asha Rani & Ors.**[1]

3. On the other hand, learned counsel for respondents 1 and 2/claimants contended that even if it is believed that the deceased was a gratuitous passenger in the said lorry, as per the decision rendered by the Hon'ble Supreme court in **Manuara Khatun & Ors. v. Rajesh Kr. Singh & Ors.**[2], respondents/claimants

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[1] **(2003) 2 SCC 223**
[2] **(2017) 4 SCC 796**

are entitled for compensation as awarded by the Tribunal, at first instance from the appellant/insurer, thereafter, the appellant/insurer is entitled to recover the same from the owner of the lorry and ultimately prayed to dismiss the appeal.

4. As per the evidence on record, P.W.2 is said to be the eyewitness to the occurrence of the accident. There is inconsistency with regard to the deceased engaging the lorry and traveling with goods (rice bag) therein. There is no legally acceptable evidence to believe that the deceased had hired the lorry and traveling with goods therein. Ex.A.1 is the certified copy of FIR, Ex.A.2 is the certified copy of inquest report, Ex.A.3 is the certified copy of charge sheet, Ex.A.4 is the certified copy of PME report of the deceased and Ex.A.5 is the certified copy of the order in O.P.No.1045 of 1999. Admittedly, P.W.1 is not an eyewitness to the occurrence of the accident. No witnesses were examined on behalf of the insurance company and the owner of the vehicle. So, in view of the evidence on record, it can be safely concluded that the deceased was not the owner of the goods. The decision relied on by the learned counsel for the appellant in *New India Assurance Company Limited* (1 supra) is of the year 2001. The decision relied on by the learned counsel for the respondents/claimants in *Manuara Khatun & Ors. v. Rajesh Kr. Singh & Ors*., is of the year 2017. In the said judgment, the Hon'ble Supreme Court held as under:

"The only question, which arises for consideration in these appeals, is whether the appellants are entitled for an order against the Insurer of the offending vehicle, i.e., (respondent No. 3) to pay the awarded sum to the appellants and then to recover the said amount from the insured (owner of the offending vehicle-Tata Sumo)-respondent No.1 in the same proceedings.

The aforesaid question, in our opinion, remains no more res integra. As we notice, it was subject matter of several decisions of this Court rendered by three Judge Bench and two Judge Bench in past, viz., National Insurance Co. Ltd. vs. Baljit Kaur & Ors., (2004) 2 SCC 1, National Insurance Co. Ltd. vs. Challa Upendra Rao & Ors., (2004) 8 SCC 517, National Insurance Co. Ltd. vs. Kaushalaya Devi & Ors., (2008) 8 SCC 246, National Insurance Co. Ltd. vs. Roshan Lal, [Order dated 19.1.2007 in SLP© No. 5699 of 2006], and National Insurance Co. Ltd. vs. Parvathneni & Anr., (2009) 8 SCC 785.

This question also fell for consideration recently in Manager, National Insurance Company Limited vs. Saju P. Paul & Anr., (supra) wherein this Court took note of entire previous case law on the subject mentioned above and examined the question in the context of Section 147 of the Act. While allowing the appeal filed by the Insurance Company by reversing the judgment of the High Court, it was held on facts that since the victim was travelling in offending vehicle as "gratuitous passenger" and hence, the Insurance Company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, this Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the Insurance Company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of "pay and recover".

Justice R.M. Lodha (as His Lordship then was and later became CJI) speaking for the Bench held in paras 20 and 26 as under:

"20. The next question that arises for consideration is whether in the peculiar facts of this case a direction could be issued to the Insurance Company to first satisfy the awarded amount in favour of the claimant and recover the same from the owner of the vehicle (Respondent 2 herein).

> 26. The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in Baljit Kaur, (2004) 2 SCC 1 and Challa Upendra Rao, (2004) 8 SCC 517 should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, the claimant was 28 years old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to the stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The Insurance Company has already deposited the entire awarded amount pursuant to the order of this Court passed on 1-8-2011 (National Insurance Co. Ltd. vs. Saju P. Paul, SLP© No. 20127 of 2011 and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant (Respondent 1) may be allowed to withdraw the amount deposited by the Insurance Company before this Court along with accrued interest. The Insurance Company (the appellant) thereafter may recover the amount so paid from the owner (Respondent 2 herein). The recovery of the amount by the Insurance Company from the owner shall be made by following the procedure as laid down by this Court in Challa Upendra Rao(supra)."

5. The facts and circumstances of the case on hand are similar to the facts and circumstances of above case. In the said decision, the Hon'ble Supreme Court also held that the issue therein also fell for consideration in **Manager, National Insurance Co. Ltd., v. Saju P. Paul & Anr.**[3], wherein directions were issued against the insurance company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings.

6. In view of the same, the decision relied on by counsel for the appellant in *New India Assurance Company Limited* (1 supra) cannot

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[3] **(2013) 2 SCC 41**

be applied to the case on hand and the contentions put forth by the learned counsel for the appellant cannot be sustained.

7. In the result, the appeal is disposed of, directing the appellant/insurance company to satisfy the award passed by the Tribunal at first instance and recover the decretal amount from the owner of the vehicle. All other directions of the Tribunal are retained. No order as to costs.

As a sequel, miscellaneous petitions, if any, pending in the appeal stand closed.

Dr. SHAMEEM AKTHER, J

August 11, 2017
MRR